THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION No.17939 OF 2006

ORDER:

The 1st petitioner-Nuclear Fuel Complex Mazdoor Sangh has been accorded recognition under Central Civil Services (Recognition of Service Associations) Rules, 1993 (for short "the Rules") for a period of five years, commencing from 1.12.2000 to 30.11.2006. In accordance with the guidelines issued by the Department of Personnel and Training for the purpose of verification for recognition of Service Associations, a circular dated 29.4.2006 was issued to all the plants and sections of 1st respondent-Nuclear Fuel Complex (NFC) inviting applications from all Service Associations, intended to apply for recognition. In response to the said circular, the 1st petitioner-Association and the 4th respondent-Association, submitted their applications with requisite documents.

The 1st petitioner-Association claims that it obtained authorizations numbering 1185, out of the total number of workmen of 2,546 on 29.4.2006 and, thus, they are entitled to be declared as the recognized Association. It is alleged that pursuant to the political pressure brought by the 4th respondent-Association, the 2nd respondent issued another circular dated 8.7.2006 informing all the employees of the 1st respondent-Organization that they are required to give consent letters authorizing the Accounts Officer for deduction of annual subscriptions for the year 2006-07 from the salary bill in favour of only one Association in the prescribed *pro forma*, through the General Secretary of the concerned Association. It is contended that though the said circular dated 8.7.2006 was not in conformity with the Rules of 1993 inasmuch as the revised options for deductions, if any, can be exercised only in the month of April each year to be effective from July of that year,

in compliance with the said circular, the 1st petitioner-Association submitted 1104 authorizations which is quite sufficient to fulfil the required 35% of the total number of employees of the 1st respondent-Organization for re-recognition of the 1st petitioner-Association. It is alleged that in the meanwhile, the 4th respondent by adopting coercive methods and by misguiding the employees, obtained 1035 authorizations and submitted total number of authorizations numbering 2,220. However, immediately thereafter, 1035 members, whose authorizations were obtained by duress, had withdrawn their authorizations in favour of the 4th respondent through individual letters of withdrawal and consented for authorizations in favour of the 1st petitioner-Association. Thereafter, the 1st petitioner-Association made a representation dated 13.7.2006 to the 2nd respondent duly submitting photo copies of authorizations of the said 1035 members who have withdrawn their authorizations in favour of the 4th respondent and consented for authorization in favour of the 1st petitioner-Association.

Having regard to the conflict arose, the 5th respondent-Deputy Secretary, Government of India, Department of Atomic Energy, vide letter dated 24.8.2006, informed the 1st respondent-Organization that it is free to apply its own method of check-off system to determine the strength of the unions and also suggested two courses, one of the courses being random check from those members who had given authorization letters in favour of the 4th respondent allegedly under duress/coercion.

In view of the said instructions of the 5th respondent, the petitioners contend that the 1st respondent-Organization is under an obligation to cause verification of membership for the purpose of recognition of Service Associations through the check-off system as per Rule 7 of the Rules. It is also contended that since 1,035 members have withdrawn their authorizations in favour of the 4th respondent and

extended their authorizations in favour of the 1st petitioner-Association, the said 1,035 authorizations shall be added to the 1st petitioner-Association for determining the recognition. Even otherwise, in view of the duress/coercion exerted by the 4th respondent in obtaining authorizations in their favour, the 1st respondent has to enquire into the same. Hence, the 1st petitioner-Association made a requisition to the 1st respondent to conduct election through secret ballot so as to bring forth the truth.

It is alleged that the 1st respondent without adopting either the check-off system or a random check of those members from whom authorizations were obtained by exerting duress/coercion, proposed to cause deduction of the subscriptions from the month of August, 2006 treating 1007 authorizations as invalid.

Aggrieved by the said action of the 1st respondent, this writ petition is filed with the following prayer:

> "to declare the action of the 1st respondent in proceeding to cause deductions for the subscription from the month of August, 2006 from the employees on behalf of the 4th respondent without considering the categorical withdrawal of authorization by them in favour of the 4th respondent and categorical extending the authorization in favour of the petitioner-Association, which is illegal, arbitrary and violative of Article 14 and 19(1)(c) of the Constitution of India, apart from being violative of principles of natural justice and consequently direct the 1st respondent to conduct the verification by check-off system of 1007 employees who had given authorization letters in favour of 4th respondent and subsequently withdrawn their authorization and extended their authorization in favour of the 1st petitioner duly taking into account their respective withdrawals in favour of the 4th respondent and consequently to direct the 1st respondent to conduct the elections through secrete ballot for electing among the service Associations seeking for recognition by the 1st respondent."

The petitioners contended that the entire procedure adopted by the 1st respondent is contrary to the provisions of the Rules. It is further contended that since 1007 members, whose authorization letters were obtained by the 4th respondent by exerting coercion, had subsequently withdrawn their authorizations and gave their consent in favour of the 1st respondent-Association within the period stipulated for verification, the 1st respondent ought to have accorded recognition in favour of the 1st petitioner-Association.

In the counter-affidavit filed on behalf of the 1st respondent, it is explained as under:

> "…..the Nuclear Fuel Complex Employees Association have submitted a list of members along with 2220 authorizations from their members for deduction of annual subscription for the year 2006-07 whereas the NFCMS have submitted 1106 authorizations from their members. Out of the above, 60 authorizations in respect of NFCEA and 16 authorizations in respect of NFCMS had to be ignored on account of discrepancies such as one workman submitting two authorizations to the amendment Association and inconsistency in the particulars. Hence, the membership of NFCEA came to 2160 (2220-60) and that of NFCMS is 1090 (1106-16). Further, 907 workmen have furnished authorizations in favour of both NFCEA and NFCMS (dual membership) despite a clear stipulation in the circular as well as CCS (RSA) Rules and hence they were treated as invalid on account of dual membership.
>
> …the petitioners' Association have also submitted 1007 withdrawal letters purported to have been given by some of the workmen withdrawing their membership from NFCEA and affirming their allegiance towards NFCMS, though it was not called for. Out of 1007 withdrawal letters, 19 letters contain certain discrepancies such as non-matching of name and E C Number with the official records, thus bringing down the number to 988. From out of the remaining 988 withdrawal letters, 907 letters are from those workmen who have submitted authorization letters for deduction of subscription for both NFCEA and NFCMS. Hence, the said withdrawal letters have not been reckoned for computing the verification of membership as employees were required to submit only authorization letters for deduction of subscription and not withdrawal letters, in terms of RSA Rules. Therefore, if the

dual membership which is not valid for both the Associations is removed from the membership of both the Associations, the NFCEA is left with 1253 authorizations and NFCMS with 183 authorizations. With the result, NFCEA has secured more than 35% of the total work force of 2546 while NFCMS is left with less than 15%.

A separate counter-affidavit has been filed on behalf of the 4th respondent-Association denying the allegations made by the petitioners and stating that as per the Rules of 1993 all the service Associations who wish to be recognized/re-recognized, are required to submit applications with the relevant documents on or before 31.5.2006 and, accordingly, the 4th respondent submitted its application on 31.5.2006. In terms of circular dated 8-7-2006 issued by the 5th respondent, 2,228 authorization letters were given in favour of 4th respondent on 14.7.2006 requesting for recovery of Rs.24/- from each member towards the annual subscription from the salary of July, 2006. Thus, the 4th respondent has secured 49.21%, whereas the 1st petitioner-Association secured 7.18%, since only 183 members submitted their authorizations in favour of the 1st petitioner-Association. The allegations of coercion/duress were categorically denied and it is stated that the writ petition itself is not maintainable as held by this Court in W.P.No.16768 of 2005.

I have heard the learned counsel for both the parties and perused the material on record.

In exercise of the powers conferred by the proviso to Article 309 and Article 148(5) of the Constitution of India, Rules were made for recognition of Service Associations of Central Government Employees. The said Rules are known as the Central Civil Services (Recognition of Service Associations) Rules, 1993.

Rule 5 of the Rules prescribes conditions for recognition of the Service Associations. Sub-rule (d)(i) of Rule 5, which is relevant for the purpose of the present writ petition, runs as under:

> "(d)(i) The Association represents minimum 35 per cent of total number of a category of employees provided that where there is only one Association which commands more than 35 per cent membership, another Association with second highest membership, although less than 35 per cent may be recognized if it commands at least 15 percent membership."

It is clear from the above Rule that for according recognition, the Service Association shall represent minimum 35 per cent of total number of a category of employees. As per Rule 7(1), the verification of membership for the purpose of recognition of a Service Association shall be done by the Check-Off-System in payrolls periodically. What is Check-Off-System has been specified under Rule 2.2 of the Rules issued by way of clarification dated 31-1-1994, which runs as under:

> "Check-Off-System is a means to verify the membership of an Association on the basis of deduction of subscription from the payrolls. Under this system, each Government employee, who is a member of an association is required to apply, in writing, to the DDO or any other designated authority, his consent, for the deduction of annual subscription for the financial year, from the payroll in favour of a particular Association. A specimen of the application is enclosed at Annexure-I. On receipt of the application, the Association is required to confirm the membership and thereafter pass on the application to the DDO for effecting recoveries."

Rule 2.2 of the Rules made it clear that under the Check-Off-System, a particular Government Servant has to subscribe to only one Association.

It was further clarified under Rule 3.2 of clarifications dated 10.3.1995 that the option of the employee in favour of more than one Association will be treated as invalid and will not be taken into account for recognition of any Association.

The record placed before this Court by the learned counsel appearing for the 1st respondent-Organization, shows that initially, on 29.4.2006, the 1st petitioner-Association submitted 1185

authorizations from the workmen of the 1st respondent-Organization. However, on the very same day, 573 members out of 1185 had submitted withdrawal letters, withdrawing from membership in favour of 1st petitioner-Association. As a result, the percentage of workmen who had given authorizations in favour of the 1st petitioner-Association had come down to less than 35 per cent, which is mandatory under Rule 5 (d)(i) of the Rules. In the circumstances, the recovery of annual subscription for the year 2006-07 was not effected in the month of July, 2006 and on 8.7.2006 a fresh circular was issued calling upon the employees to give consent letters for deduction of annual subscription in the prescribed *pro forma* in favour of one of the Associations. In response to the same, the 1st petitioner-Association submitted 1185 authorizations, whereas the 4th respondent-Association submitted 2,220 authorizations. After verification, it was found that out of the authorizations submitted by the 1st petitioner-Association, 1090 were in the prescribed *pro forma.* Accordingly, out of the authorizations submitted by the 4th respondent-Association, 2160 were found to be in order. However, the verification revealed that 907 workmen have furnished authorizations in favour of both the 1st petitioner-Association and the 4th respondent-Association. Since such dual membership is impermissible under the Rules, the said applications were treated as invalid in terms of Rule 3.2 of the Rules. Accordingly, the said 907 authorizations were removed from the membership of both the 1st petitioner-Association and the 4th respondent-Association. In the result, whereas the 4th respondent-Association received 1253 valid authorizations i.e. 49.21 percentage, the 1st petitioner-Association received only 183 valid authorizations, i.e., 7.18 percentage. Accordingly, the 1st respondent-Organization proceeded to deduct the annual subscription for the year 2006-07 from the salary bill of September, 2006.

It is clear from the material available on record that the procedure adopted by the 1st respondent is in accordance with the procedure prescribed under the Rules and does not suffer from any infirmity.

However, the learned counsel for the petitioners vehemently contended that the 4th respondent-Association had obtained authorizations from the workmen by coercion and, therefore, 1007 members whose authorization letters were initially obtained by the 4th respondent, had subsequently withdrawn them and gave fresh consent in favour of the 1st petitioner-Association. The learned counsel contended that when the said consent was given in favour of the 1st petitioner-Association within the period stipulated for verification, there is absolutely no reason for ignoring the same.

I am unable to agree with the said contention, since the material on record shows that all the said withdrawal letters were given by the workmen, who opted dual membership and were found to be invalid. Hence, even assuming that those employees have subsequently withdrawn their consent in favour of the 4th respondent-Association, the same is immaterial and was rightly ignored by the 1st respondent-Organization. The fact that 907 employees opted dual membership is clear from the record and could not be disputed by the petitioners. If the said authorizations are removed from the membership of both the Associations, apparently the 1st petitioner-Association had secured only 7.18%. Hence, it is not necessary to conduct re-verification of membership of the employees, who had allegedly withdrawn their authorizations subsequently.

It is also relevant to note that none of the said members, who had either withdrawn their authorizations or whose authorisations were held to be invalid, is before this Court. In the absence of the aggrieved persons, the 1st petitioner which is only an Association, cannot maintain this writ petition, as held by this Court in

W.P.No.16768 of 2005. The 1st petitioner-Association is only a rival Association and has no *locus standi* to maintain this writ petition.

Viewed from any angle, the writ petition is devoid of any merit and the same is accordingly, dismissed. No costs.

_____

(G. ROHINI, J.

13th October, 2006.
Kgr
Note:- CC in 3 days.

THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION No.17939 OF 2006

13th October, 2006.

Between:

Nuclear Fuel Complex Mazdoor Sangh (Regd.No.A-1804) represented by its General Secretary – G. Kista Reddy and another. .. Petitioners.

And

The Nuclear Fuel Complex, Government of India, Department of Atomic energy, represented by its Chief Executive, ECIL Post, Hyderabad and others. .. Respondents.